

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FOREST LABORATORIES, INC., ET AL.,)	
Plaintiffs,)	
vs.)	
COBALT LABORATORIES, INC., ET AL.,)	
Defendants.)	
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FOREST LABORATORIES, INC., ET AL.,)	
Plaintiffs,)	
vs.)	C.A. No. 08-21 (GMS) (LPS) (Consolidated)
BARR LABORATORIES, INC., ET AL.,)	
Defendants.)	
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FOREST LABORATORIES, INC., ET AL.,)	
Plaintiffs,)	
vs.)	
DR. REDDY'S LABORATORIES, INC., ET AL.,)	
Defendants.)	
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FOREST LABORATORIES, INC., ET AL.,)	
Plaintiffs,)	
vs.)	
ORGENUS PHARMA, INC.,)	
Defendant.)	
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FOREST LABORATORIES, INC., ET AL.,)	
Plaintiffs,)	
vs.)	
APOTEX, INC., ET AL.,)	
Defendants.)	

**PLAINTIFFS' CONTINGENT CROSS-MOTION TO TRANSFER
THEIR CLAIMS AGAINST DEFENDANT ORGENUS**

Pursuant to 28 U.S.C. § 1406(a), in the event that the Court concludes that it does not have personal jurisdiction over Orgenus Pharma, Inc. (“Orgenus”) in this case, Plaintiffs move for a transfer of their action against Orgenus to the United States District Court for the District of New Jersey. The grounds for this motion are as follows:

MEMORANDUM OF LAW

Plaintiffs have made a *prima facie* case that exercising personal jurisdiction in this case over Orgenus is consistent with Delaware’s long-arm statute and the Due Process Clause.¹ Should this Court decline to exercise jurisdiction over Orgenus, however, Plaintiffs respectfully request that their action against Orgenus be transferred to the District of New Jersey. A court may, in the interest of justice, transfer a case to any district “in which [the case] could have been brought,” 28 U.S.C. § 1406(a), and this Court routinely does so. *See, e.g., Stein v. Chemtex Int’l, Inc.*, No. 04-001-SLR, 2004 WL 722252, at *3 (D. Del. 2004); *FS Photo, Inc. v. PictureVision, Inc.*, 48 F. Supp. 2d 442, 450 (D. Del. 1999) (transferring case under § 1406(a) because there was no suggestion that the plaintiff brought the case in Delaware for an improper purpose).

As required by § 1406(a), Plaintiffs’ action against Orgenus could have been brought in the District of New Jersey. Orgenus is a New Jersey corporation with a principal place of business in that state (Pls.’ Opp., Ex. 3 at OCP_00000792-93), so it is clearly subject to personal jurisdiction there. Moreover, Orgenus already acknowledged in its motion to dismiss

¹ *See* Plaintiffs’ Answering Brief in Opposition to Defendant Orgenus’ Motion to Dismiss for Lack of Personal Jurisdiction (“Pls.’ Opp.”), submitted concurrently herewith.

that it would be amenable to personal jurisdiction in New Jersey: “[B]oth Orchid India and Orgenus are subject to suit in New Jersey” (D.I. 89 at 1.)

To transfer Plaintiffs’ claims against Orgenus, this Court need not transfer the entire case against all Defendants to the District of New Jersey.² The Third Circuit has emphasized that a district court can sever claims against a given defendant for purposes of transfer:

In the situation where venue is proper for one defendant but not for another and dismissal is inappropriate, *the district court has a choice*. One option is to transfer the entire case to another district that is proper for both defendants. *Another alternative is to sever the claims*, retaining jurisdiction over one defendant and transferring the case as to the other defendant to an appropriate district.

Cottman Transmission Sys., Inc. v. Martino, 36 F.3d 291, 296 (3d Cir. 1994) (emphasis added); *see also Rappoport v. Steven Spielberg, Inc.*, 16 F. Supp. 2d 481, 496 (D.N.J. 1998) (“In situations where the claims against one or more defendants are severed because of improper venue, a district court may then transfer the severed claims to another district pursuant to § 1404 or § 1406(a).”). It is precisely such severance and transfer that Plaintiffs seek here, in the event that the Court declines to exercise personal jurisdiction over Orgenus.

The second requirement of § 1406(a) – that a transfer “be in the interest of justice” – is also met here. Should this Court decline to exercise jurisdiction over Orgenus, a transfer of Plaintiffs’ claims against Orgenus to New Jersey is in the interest of justice – especially if Plaintiffs’ claims against Orchid Chemicals & Pharmaceuticals, Ltd. (“Orchid

² Plaintiffs’ Complaint against Orgenus was filed on May 16, 2008 (D.I. 1 of -291), but later consolidated by the Court with Plaintiffs’ other pending claims against other Defendants for infringement of the patent-in-suit (D.I. 91).

India") are transferred there. (D.I. 99.) Plaintiffs' claims against Orchid India and Orgenus arise from the filing of the same ANDA (ANDA No. 90-044) and should be tried in the same forum for purposes of judicial efficiency and consistency of judgments.

Notably, Orchid India did not identify Orgenus as its U.S. regulatory agent for this ANDA until March 3, 2008 (*see* D.I. 146 at 6-9), when Orchid India filed a motion to dismiss for lack of personal jurisdiction (D.I. 43 & 44). By that time, Plaintiffs had already filed suit in Delaware against twenty-three other Defendants, including Orchid India and its wholly-owned subsidiary, Orchid Pharmaceuticals, Inc. ("Orchid Pharma").³ Plaintiffs thus chose to sue Orgenus in the same forum. If, however, Plaintiffs' claims against Orchid India are transferred to the District of New Jersey, Plaintiffs' claims against Orgenus should be transferred there as well.

CONCLUSION

For these reasons, if the Court finds that it cannot exercise personal jurisdiction over Orgenus, it should transfer Plaintiffs' action against Orgenus to the District of New Jersey.

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2008 I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to:.

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